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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

DELORES LOPEZ MORENO,

Defendant and Appellant.

F071825

(Super. Ct. No. F10905603)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Fresno County. Denise Lee Whitehead, Judge.

Susan K. Shaler, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Gomes, Acting P.J., Detjen, J. and Peña, J.

Appellant Delores Lopez Moreno filed a petition for resentencing pursuant to the provisions of Proposition 47. (Pen. Code, § 1170.18.)¹ The trial court denied the petition, finding that appellant was ineligible under the terms of the statute. Appellate counsel filed a brief asserting she could not identify any arguable issues in the case. (*People v. Wende* (1979) 25 Cal.3d 436.) We agree and affirm the trial court's order.

On November 1, 2010, appellant entered Warner Company Jewelers and left the store without paying for a diamond valued at \$19,950.

On November 15, 2011, appellant pled no contest to violating sections 459 and 460, subdivision (b), second degree burglary, and section 487, subdivision (a), grand theft.

On December 23, 2014, appellant petitioned to have these convictions reduced to misdemeanors pursuant to Proposition 47. (§ 1170.18.)

On June 22, 2015, following a hearing, the court found appellant ineligible for relief as her convictions for violation of sections 459, 460, subdivision (b) and section 487, subdivision (a) do not qualify under section 1170.18. The court rejected defense counsel's contention that appellant's sentence should be reduced because the record of the convictions did not show the value of the property taken. The court ruled that the burden of proof was on appellant to show she was eligible for resentencing.

On June 23, 2015, appellant filed a timely notice of appeal. Appellate counsel filed a brief asserting she could not identify any arguable issues in the case. (*People v. Wende, supra*, 25 Cal.3d 436.) By a letter dated February 3, 2016, we invited appellant to inform us of any issues she would like this court to address. Appellant did not respond.

On November 4, 2014, California voters enacted Proposition 47, and it went into effect the next day. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1089.) "Proposition

¹ All statutory references are to the Penal Code unless otherwise noted.

47 makes certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants. These offenses had previously been designated as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors).” (*Id.* at p. 1091.)

“Proposition 47 also created a new resentencing provision: section 1170.18. Under section 1170.18, a person ‘currently serving’ a felony sentence for an offense that is now a misdemeanor under Proposition 47, may petition for a recall of that sentence and request resentencing in accordance with the statutes that were added or amended by Proposition 47. (§ 1170.18, subd. (a).)” (*People v. Rivera, supra*, 233 Cal.App.4th at p. 1092.)

Second degree burglary and grand theft are not among the offenses listed in section 1170.18. Thus, appellant is not eligible for relief under Proposition 47. The trial court properly denied her petition for resentencing.

We see no other arguable error that would result in a disposition more favorable to appellant.

DISPOSITION

The order denying defendant’s petition for resentencing pursuant to Proposition 47 is affirmed.